

BEFORE THE DISTRICT CONSUMER DISPUTES REDRESSAL FORUM, SAS
NAGAR (MOHALI) .

Consumer Complaint No.303 of 2011

Date of institution: 21.07.2011

Date of Decision: 13.09.2011

Balraj Kalra, resident of Lajpat Nagar, Street No.6,
Kotkapura.

..... Complainant

Versus

A.P.I.O. Rural Development & Panchayat Deptt. Punjab Vikas
Bhawan, Sector 62, Pension Cell, SAS Nagar (Mohali).

..... Opposite Party.



**Complaint under Section 12 of the
Consumer Protection Act, 1986.**

CORAM:

Shri B.S.Mehandiratta, President.

Dr. S.S.Dhaliwal, Member.

Ms. H.K.Ghuman, Member.

Present: Complainant in person

Mr. Sunil Kumar Khosla, Assistant Controller for
the OP.

ORDER

The complainant's case is that he is husband of
Parkash Kumari, Craft Teacher who retired from the
Department of Rural Development, Punjab. Her PPO No. is
31. She is not being paid DA on her pension since July,
2009. Vide his application dated 20.05.2011 Ex.C-1 filed
under the Right to Information Act, 2005 (for short 'the
RTI Act') he sought the following information from the OP:

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1. Number of retired Panchayat Samiti employees in the State of Punjab.
2. Total amount of increased D.A. from July, 2009 up to date and balance which has not yet been paid.
3. Amount of increased D.A. from July 1st, 2009 to update + balance amount which has not yet been paid to Parkash Kumari.
4. Total proposed pension of P.P.O.31 if all the increased D.A. instalments are included.



He sought the aforesaid information through registered post enclosing with his application the requisite postal stamps. His grievances are as under:

- i) Under Section 7 (1) of the RTI Act, information is required to be furnished by the designated Public Information Officer (PIO) within 30 days of receipt of the requisite fee/information. However, he was not supplied this information within 30 days and had to file an appeal to the PIO concerned on 25.06.2011.
- ii) He received the information sought on **30.06.2011** only in respect of Para No.1 of his application. Information supplied qua his other 3 paragraphs is wrong, incorrect and misleading. He was supplied parawise information vide letter Ex.C-3 of the Deputy Director, Panchayat as under:
 - a) So far 1278 retirees are being paid pension.
 - b) The DA instalments w.e.f. 01.07.2009 are not being released due to paucity of funds.
 - c) As above.
 - d) Information sought vide Para No.4 could not be furnished.
- iii) In spite of his request for supply of information through registered post, he was sent incomplete information through ordinary post, even though he had paid postal stamps required for registered post.

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 for *P. Parkash*
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- iv) Letter Ex.C-3 bearing date 16.06.2011 has been ante dated because he was not supplied the information till 25.06.2011 on which date he filed appeal to the PIO concerned. This fact is clear from the fact that envelop Ex.C-3/1 (copy) in which it was sent does not bear any post office seal.

Alleging deficiency of service and mental tension and financial loss at the hands of the OP, the complainant has sought direction to the OP to pay him compensation to the tune of Rs.50,000/-; to refund him postal charges of Rs.25/- and also to pay him the litigation expenses of Rs.10,000/- and also supply him the correct information.



2. The OP has filed written statement through Dy. Director Panchayats, Punjab. It is pleaded that the complainant is not a consumer as defined under section 2 (1) (d) of the Consumer Protection Act, 1986 (for short 'the CP Act'). He has already availed the channel of filing appeal before the Appellate Authority and in case he feels aggrieved by the appellate order, he can file appeal before the Punjab State Information Commission under the provisions of the RTI Act. It is pleaded that requisite information was provided to the complainant within the stipulated period vide letter No.1436 dated 16.06.2011 Ex.C-3. The Appellate Authority gave the complainant due opportunity to defend his case but he did

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not appear before the Appellate Authority. His appeal was dismissed by the order of the Appellate Authority dated 18/19.07.2011 Ex.R-1. Whatever information was available stands supplied to the complainant. As regards the allegation of not sending the information to the complainant through registered post, it is pleaded that the complainant paid excess amount of his own free will not demanded from him. It has also been pleaded that pension to employees concerned including the wife of the complainant is being released from the Contributory Provident Fund (CPF) which is a Fund of Samitis share/Zila Parishads share and the Punjab Govt. is not contributing anything in the said Fund. Panchayat Samitis and Zila Parishads are local authorities under Section 2 (Ze) of the Punjab Panchayati Raj Act, 1994. It is pleaded that due to shortage of funds, DA is not being paid to the wife of the complainant. Denying allegation of deficiency of service, the OP has sought dismissal of the complaint against him.

3. Parties have led evidence.

4. The complainant has tendered in evidence his affidavit Ex CW1/1; copies of his application for information Ex.C-1; his letter dated 25.06.20011 to the Appellate Authority Ex.C-2; letter of the Deputy Director



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Panchayats No.1436 dated 14.06.2011 Ex.C-3; unstamped envelop Ex.C-3/1 in which letter Ex.C-3 was sent; letter of his wife dated 21.05.2011 to the Director Panchayats Ex.C-4; first page of issue of Hindustan Times dated 21.06.2011 containing news regarding dissatisfaction with RTI Ex.C-5; original unstamped envelopes in which the OP sent various letters Exs.C-6/1 and C-7/1; letter No.6769 dated 19.07.2011 of the OP Ex.C-6; letter No.4975 dated 08.07.2011 of the OP Ex.C-7; application of his wife dated 21.05.2011 Ex.C-8 and report of ultrasound of his disease dated 07.01.2011 Ex.C-9.



5. Evidence of the OP consists of copy of order of the Appellate Authority dated 19.07.2011 Ex.R-1. Shri Jaspal Singh, Deputy Director Panchayats has also tendered his affidavit in support of the pleadings of the OP.

6. We have heard the complainant in person and representative of the OP.

7. The first point for consideration is whether the complainant is a '**consumer**' and the OP is a '**service provider**' within the meaning of Section 2(1) (d) of the CP Act. In this regard, it has been contended on behalf of the OP that the fee paid by an applicant for seeking information under the provisions of the RTI Act is not a

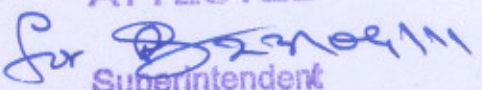
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'consideration' nor is supply of information under the RTI Act 'service' within the ambit of the CP Act. The PIOs and the APIOs designated under the RTI Act are discharging statutory functions and are not rendering any 'service' within the purview of the CP Act. The RTI Act provides detailed mechanism for remedy where the PIO/APIO fails to provide the demanded information by way of appeal to the State Public Information Officer (SPIO) which the complainant has duly availed in this complaint and his appeal stands already rejected vide order of the appellate authority dated 18.07.2011 Ex.R-1.



8. On the other hand, the complainant has argued that the RTI Act does not provide to an applicant remedy as a 'consumer' which he can avail of only under the CP Act. He has further argued that an applicant under the RTI Act seeking information under the relevant Sections is a 'consumer' and the Information Officer is a 'service provider' and so is the Public Authority which has designated him so and any acts of commission and omission on the part of the Information Officer amount to 'deficiency of service' amenable to the jurisdiction of Consumer Fora. In support of his contention, he has cited two decisions of the Hon'ble National Commission. The first is Smt. Usha Rani Aggarwal Vs. Nagar Palika Parishad, Haldwani, District Nainital etc. arising out of

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appeal Nos.931 and 932 of 2003 decided by the Hon'ble National Commission on 06.09.2006. It was specifically held by the Hon'ble National Commission in this decision that applicants under the RTI Act seeking information were '**consumers**' because for getting copies of relevant documents (assessment order in that case), they were required to deposit requisite fee which was consideration for the service rendered. Non supply of a copy amounted to '**deficiency of service**' on the part of the municipal committee. In the second decision cited as **Dr. S.P. Thirumala Rao Vs. Municipal Commissioner, Mysore City Municipal Corporation**, arising out of Revision Petition No.1975 of 2005 decided by the Hon'ble National Commission on 28.05.2009, the learned District Forum held that Section 3 of the CP Act provides an additional remedy to a '**consumer**' and, therefore, any provision in the RTI Act barring jurisdiction of the Court (as under Section 23 of the RTI Act, 2005) did not bar the jurisdiction of the Consumer Fora to entertain a complaint of '**deficiency of service**' on the part of the information officer more so because the relevant Section barring the jurisdiction applied to the courts whereas Consumer Fora are not a courts. The District Forum also held that failure of the Information Officer to furnish information in time prevented the complainant from approaching the appropriate appellate authority for redressal of his grievance and,



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therefore, he was entitled to invoke jurisdiction of the District Consumer Forum. The appeal filed by the Information Officer was accepted by the Hon'ble State Commission by holding that once the complainant had availed the remedy against which appeal was provided, he could not maintain a complaint under the CP Act. In the revision petition filed against the order of the Hon'ble State Commission, the Hon'ble National Commission set aside the order of the Hon'ble State Commission and restored that of the learned District Consumer Forum with the following observations:

"The District Forum had dealt with the objections raised by the opposite party regarding bar of jurisdiction of Courts under Section 10 of the Act as also the overriding effect of the Act. The State Commission in the impugned order did not at all refer to the findings of the District Forum on the said issues but allowed the appeal only on the ground that once the complainant had already availed remedy under the said Act and appeal is provided therein, the complainant cannot maintain a complaint under the CP Act. We may at this stage point out that the findings of the District Forum with reference to Section 10 & 11 are supported by reasons which do not call for any interference. In fact, the view taken by the District Forum is in consonance with the rulings of this Commission in the case of Smt. Kalawati (supra) and Smt. Usha Rani Aggarwal (Supra). We entirely agree with the reasoning of District Forum on this aspect. Though the said Act provides for penalties under Section 9 of the said Act on the competent authority, yet, the Act does not provide for any remedy to the consumers who have sought information under the said Act for deficiency of service in the nature of compensation or damages for not furnishing the information sought to which they are entitled to get under the said Act. Section 3 of the CPA provides additional remedy in

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addition to the remedies provided under other Acts and it is not in derogation of any provisions of any law. The Consumer Fora has, therefore, **jurisdiction to entertain the complaint in respect of deficiency of service in the given facts especially when information sought was not furnished.** The competent authority was required to give information within 15 days of the application in terms of Section 5 of the said Act. **However, the said information was not furnished.** The complainant had approached the District Forum claiming compensation/damages for deficiency of service. Even though, further remedy may be available to the applicant in case information is not supplied in terms of Section 5 of the Act within 15 days, yet there is no bar to approach the District Forum for deficiency of service. The remedy under the said Act would take care of disciplinary action and penalty against the competent authority in not furnishing the information but no remedy is provided under the said Act to the applicant seeking information therein **if information sought is not provided** resulting in deficiency of service on that count. The applicant had paid a fee of Rs.10/- for seeking the said information. The case of the applicant would fall within the scope and ambit of Section 2 (i) (o) CP Act, which provides that service, means service of any description which is made available to potential users, which include purveying of news or supplying of other information. **The complainant had availed of the services under the said Act for consideration by paying fee and had sought information under the said Act, which was not supplied to him, which amounts to deficiency of service.** The complainant is, thus, a consumer vis-à-vis information sought on payment under the said Act. In our view, therefore, the State Commission was wrong while holding that once the complainant had availed the remedy against which appeal was provided, he could not maintain a complaint under the CP Act."



9. In view of the aforesaid two rulings of the Hon'ble National Commission, there remains no doubt that

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the fee paid by an applicant under the provisions of RTI Act is 'consideration', the applicant is a 'consumer' and the Information Officer is 'service provider'. The action of furnishing of information in lieu of fee received is of rendering of service and the failure to supply the information as per provisions of the RTI Act is 'deficiency of service' within the mischief of provisions of the CP Act. Therefore, we hold that the complaint is maintainable before this Forum.



10. The next question for determination is whether there is any deficiency of service on the part of the OP.


11. Though a comparison of 4 paragraphs in the application of the complainant Ex.C-1 seeking information with 4 paragraphs of the reply Ex.C-3 would show that the information is incomplete yet on behalf of the OP it has been contended that wife of the complainant is not a Punjab Govt. employee. She was an employee of the Zila Parishad and is being paid pension out of a Fund established for that purpose by the Panchayat Samitis and Zila Parishads in Punjab. The Punjab Government is not a contributory to that Fund. That Fund is going to exhaust within the next two years. Due to that reason DA instalments to the pensioners of the aforesaid local bodies are not being released so that they may be paid at

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least some amount as pension to sustain them. Only available information under the RTI Act is to be provided to an applicant. Information which has to be prepared is not to be supplied. In the present case the total amount payable to all the pensioners of the aforesaid local bodies and specifically to the wife of the complainant information regarding which was sought by the complainant vide Sr.Nos. 2 & 3 of his application required elaborate calculations and was not already available and, therefore, the OP was not obliged to provide the said information. Similarly, when the DA has not yet been released with effect from July, 2009, the question of calculation of the total pension of the wife of the complainant on the basis of the DA instalments certainty of the release of which is not there, does not arise and this information also requires calculations and is not readily available due to which the OP is not obliged to provide this information as well.

12. We have given our thoughtful consideration to the aforesaid submissions and also heard the complainant in reply at length. We find no reason to reject the aforesaid submissions made on behalf of the OP for the reason that the information sought for by the complainant under Para Nos. 2 to 4 of his application is hypothetical and not in respect of a readily available data. To that

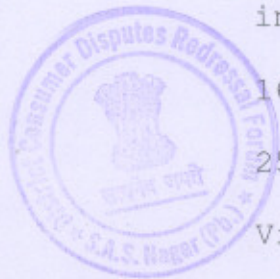
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extent we find no deficiency of service on the part of the OP.

13. However, from the affidavit of the complainant and the evidence we find that the complainant received the information sought on 30.06.2011. He had already filed his appeal under the RTI Act on 25.06.2011 due to inaction of the concerned PIO in not providing the information within the stipulated period of 30 days. Had he received the information vide letter of the OP Ex.C-3 bearing date 16.06.2011 within the period of 30 days or before 25.06.2011, there was no need for him to file the appeal. Vide his application Ex.C-1 he had also sought supply of the information through registered post whereas the envelop, copy of which is Ex.C-3/1 in which he was sent the information, bears postal stamp of Rs.5/- only. On the letter of the OP Ex.C-3 word 'registered' in Gurmakhi script is mentioned and it is argued on behalf of the OP that the information was sent through registered post. However, relevant register of the OP containing information regarding outside post showing the amount of postal stamps used on letter Ex.C-3 has not been produced. Otherwise also, we find the version of the complainant to be correct because even the two other original envelopes Exs.C-6/1 and C-7/1 sent by the OP to the complainant bear postal stamps of Rs.5/- only. Therefore, not providing the



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information within 30 days and sending it through ordinary post instead of registered post is clear deficiency of service on the part of the OP.

14. For the reasons recorded above, the complaint is allowed. The OP is directed to pay to the complainant compensation for mental agony and harassment to the tune of Rs.5,000/- (Rupees five thousand only) and also to pay him costs of litigation to the tune of Rs.2,000/-. It is also directed to refund to the complainant the amount of postal stamps sent by the complainant to it for supply of information through registered post to the tune of Rs.25/- Compliance of this order by the OP should be made within one month from the date of receipt of a certified copy of this order. Certified copies of this order be furnished to the parties forthwith free of cost and thereafter the file be consigned to the record room.

Pronounced.

September 13, 2011

(B.S.Mehandiratta)
President

(Dr.S.S.Dhaliwal)
Member

(Ms.H.K.Ghuman)
Member

District Consumer Disputes Redressal
Forum, S.A.S. Nagar, Mohali

1. Date of Application : 22/9/11

2. Name of Applicant : Dr S K. Malhotra

3. Date of Receipt of Complaint : 28/9/11

4. Date of Disposal : 28/9/11

5. Whether fees or
against fees

Certified to be true copy

for Superintendent
Distt. Consumer Disputes Redressal Forum
S.A.S. Nagar (Mohali)

for Superintendent
22/09/11